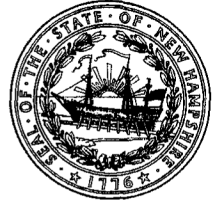




The State of New Hampshire  
*Department of Environmental Services*



Michael P. Nolin  
Commissioner

April 26, 2005

TSNJR, Inc.  
Attn: Thomas Nolan  
RFD 3  
Dover, NH 03820

Re: Docket No. AF 04-085 Motion to Accept Settlement Agreement

Dear Mr. Nolan:

Enclosed for your records is a copy of the Motion to Accept Settlement Agreement in the above-captioned matter executed by Anthony P. Giunta, P.G., Director of the Waste Management Division, and accepted by Commissioner Michael P. Nolin on April 21, 2005.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

**COPY**  
Michael P. Serafani,  
Legal Assistant

cc: Anthony P. Giunta, P.G., Director, Waste Management Division  
Gretchen R. Hamel, Administrator, DES Legal Unit  
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit  
James Martin, DES Public Information Officer  
Lynn A. Woodard, DES WMDT  
Thomas R. Beaulieu, DES WMD  
Tammy Calligandes, DES WMD

TSNJR, Inc.  
Attn: Thomas Nolan  
RFD 3  
Dover, NH 03820

Tri City Car Wash Center, 55 Route 108  
Somersworth, NH -UST ID #0-111910

**ADMINISTRATIVE FINE**  
**No. AF 04-085**

**MOTION TO ACCEPT SETTLEMENT AGREEMENT**

NOW COME the Department of Environmental Services, Waste Management Division ("The Division") and TSNJR Inc., parties to the above-captioned matter, and stipulate to the following:

1. The Commissioner of the Department of Environmental Services ("DES"), is authorized under RSA 146-C:10-a to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-C and Env-Wm 1401 relating to installation, maintenance, operation, and closure of underground storage facilities. Pursuant to RSA 146-C:10-a, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.
2. TSNJR, Inc. ("TSNJR") is the registered facility owner of one 15,000-gallon (split 11,000/4,000) underground storage tank ("UST") system at the Tri-City Car Wash Center facility ("the Facility"), further identified as UST # 0111910, located on real property at 55 Route 108, Somersworth, NH ("the Property").
3. On September 17, 2004, the Division issued Notice of Proposed Administrative Fine No. AF 04-085 ("the Notice") to TSNJR seeking fines totaling \$2,400 for violations of New Hampshire Administrative Rule Part Env-Wm 1401 for one Underground Storage Tank ("UST") system.
4. Specifically, the Notice cited TSNJR for violating Env-Wm 1401.25(d) by failing to properly install and maintain overfill protection equipment for both compartments of the UST system. Pursuant to Env-C 607.05(j) the Division sought a fine of \$400.
5. The Notice further cited TSNJR for violating Env-Wm 1401.31(a) by failing to maintain leak monitoring equipment in good working order at all times to continuously perform their original design function for both compartments of the UST and by failing to perform the annual test for proper operation. Pursuant to Env-C 607.05(d) the Division sought a fine of \$2,000.
6. In order to settle this matter, the Division and TSNJR have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.

7. Of the proposed fine, totaling \$2,400, the entire amount of \$2,400 shall be suspended due to information received from TSNJR verifying that the noted deficiencies had been corrected during the prescribed time.

8. The suspended portion of the proposed fine, in the amount of \$2,400 is contingent on TSNJR maintaining the subject facility in compliance with Env-Wm 1401 for a period of one year from the date of execution of this document. If TSNJR fails to maintain compliance during the one-year period, the suspended portion of the proposed fine in the amount of \$2,400 shall become due and payable immediately. If TSNJR maintains compliance for the prescribed one-year period, the suspended portion of the fine shall be waived.

9. Payment that becomes due pursuant to Paragraph #8 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit  
Attention: Michael Sclafani, Legal Assistant  
P.O. Box 95  
Concord, NH 03302-0095

10. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

11. By executing this Agreement, TSNJR waives his right to a hearing on or any appeal of the administrative fines identified in the Notice, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

12. The effective date of this Agreement will be the date on which it is signed by an authorized representative of TSNJR, the Director of the Waste Management Division, and the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.

13. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

4/7/05  
Date

Respectfully submitted,  
TSNJ Inc.

**COPY**

By: Thomas S. Nolan, Jr.  
Duly Authorized

4/21/05  
Date

DES Waste Management Division

**COPY**

Anthony Granta, Director

This Motion to Accept Settlement agreement is granted this 21<sup>st</sup> day of APRIL, 2005.

**COPY**

Michael P. Nolan, Commissioner  
Department of Environmental Services